Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 76-93

ROVIN SALES COMPANY

Petitioner

vs.

CORNELIU BOGDAN and NAPOLEON FODOR

Respondents

PETITION FOR A WRIT OF CERTIORARI

To The United States Court of Appeals For The Seventh Circuit

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Cleveland, Ohio 44115,
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Respondents

PETITION FOR A WRIT OF CERTIORARI
To The United States Court of Appeals
For The Seventh Circuit

The petitioner prays for a writ of certiorari to review the order of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled cause on May 3, 1976.

OPINIONS BELOW

The District Court entered an order dismissing the respondents as defendants, and denied

the petitioner's motion to reconsider that order, or in the alternative to certify the question for appeal pursuant to 28 USC Section 1292(b). The Court of Appeals dismissed the petitioner's appeal "in accordance with the motion of defendants-appellees." No opinion was rendered by the Court of Appeals or the District Court. The order of the Court of Appeals and Memorandum Order of the District Court appear in the Appendix hereto.

JURISDICTION

The order of the Court of Appeals for the Seventh Circuit was entered on May 3, 1976. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether the Ambassador and a member of the diplomatic mission to the United States may be joined as defendants in a diversity suit in which their country is a defendant and subjected to United States jurisdiction in an action arising from their commercial pursuits, or is such an action against them barred by statute prohibiting suits against ministers of foreign states, 22 USC, Section

252-254?

2. Did the District Court properly surrender jurisdiction over the respondents in absence of an explicit request or assertion by the State Department for such abstention?

3. Are the answers to the foregoing questions too important to deny interlocutory review, and will the deferment of the appeal to await final judgment in the action prejudice or irreparably affect the substantial rights of the petitioner?

STATUTORY PROVISION INVOLVED

22 U.S.C., Sections 252-254, appear in the Appendix.

STATEMENT OF THE CASE

The jurisdiction of the District Court was invoked because of the diversity of citizenship, the petitioner being an Ohio corporation, and the defendants and respondents entities and citizens of Romania.

The petitioner, at all times relevant hereto, had its office and principal place of business in Cleveland, Ohio. On June 15, 1973, petitioner filed a complaint against Vinexport, a State company for foreign trade of Romania, in the United States District

Court for the Northern District of Illinois, Eastern Division. The service of process on the Economic Counselor and head of the Romanian Commercial Office in Chicago, Illinois, was quashed and the action was ordered dismissed by the District Court. As a result thereof, the complaint was amended and the action was filed against the Socialist Republic of Romania, its Ministry of Foreign Trade, the Ambassador to the United States and the Economic Counselor to the diplomatic mission to the United States, namely, Corneliu Bogdan and Napoleon Fodor, respectively, respondents herein, and other individual agents and representatives of that State. The defendants filed a motion to dismiss the amended-complaint for lack of subject matter jurisdiction and/or to quash service of summons upon the defendants. The District Court rejected the argument that the Socialist Republic of Romania, and its several agencies and agents are immune from United States

jurisdiction on the ground of sovereign immunity. It reaffirmed its earlier ruling that "where a foreign sovereign engages in commercial as opposed to political or governmental activities, it is not immune from suit", citing Victory Transports, Inc. v. Comisaria General, 336 F.2d 354 (2d Cir., 1964), and that the defendants are amenable to suit in the district.

On September 23, 1975, the defendants were ordered to answer the petitioner's amended-complaint by October 27, 1975. Subsequently, two extensions of time to answer were granted to the defendants to November 27, 1975. Thereafter, the defendants, other than Vinexport and Vasile Lapadatu, again requested, and the court granted, another leave to plead on November 28, 1975, for a period of 30 days. During this period, and specifically on December 4, 1975, the Department of State addressed a letter to the District Judge wherein it forwarded two certi-

fications of immunity status relating to the respondents, Corneliu Bogdan and Napoleon Fodor, and whereby the court was informed that the said individuals enjoy "full diplomatic immunity from judicial process". These individuals then filed another motion with the court on December 11, 1975, wherein they sought dismissal as defendants in the action. The motions of Corneliu Bogdan and Napoleon Fodor were granted and the action against them was dismissed on January 21, 1976. The petitioner's request for reconsideration of the dismissal order, or in the alternative to certify the question for appeal pursuant to 28 U.S.C., 1292(b) was denied.

An appeal of the District Court's action was taken to the Court of Appeals. The respondents moved for a dismissal of the appeal on two grounds. (1) The respondents, as diplomatic representatives of a foreign mission to the United States, are immune from suit in the courts of the United States, and (2) the

orders in question are not appealable orders. The Court of Appeals dismissed the appeal "in accordance with the motion of the defendants-appellees,".

Petitioner was organized in 1968 specifically to help the country of Romania to promote the sale of its wines and other alcoholic beverages in the United States. Inasmuch as the wines of Romania were never sold in the United States, petitioner undertook a marketing study to determine the practicability of selling the wines in the United States; and, thereafter, it engaged in diverse and sundry promotional efforts and activities throughout our country. In 1972, after four years of persistent efforts and vigorous activities, the petitioner, Rovin Sales Company (hereinafter called Rovin) succeeded in establishing a market for the wines in the following states: Arizona, California, Georgia, Illinois, Maryland, Michigan, New York, Nevada, Ohio, Oregon, Texas,

and in Washington, D.C. Chicago and its environs became the second largest market for the sale of Romanian wines. Petitioner's persistent activities led to substantial commitments for the purchase of the wines in Illinois and other states for 1973.

From its inception and throughout the years of its activities, Rovin was in frequent and regular contact with the appropriate Romanian officials and authorities concerning its efforts and programs on behalf of the wines. Everything which was done and pursued by Rovin to promote and sell the wines was with the knowledge and approval of these officials. Rovin carried out its activities as the sole agent in the United States for the wines of Romania. During the year 1971, the respondent, Corneliu Bogdan, and other commercial representatives of Romania initiated and carried out a program to meet with and to familiarize American business and commercial interests in the United States

with the liberal opportunities and the realistic possibilities of serious trade with Romania created by the newly enacted Foreign Trade Law of Romania. As a consequence thereof, respondent Bogdan and his associates arranged for and participated at a meeting which was sponsored by the "Chicago Association of Commerce and Industry" on June 23, 1971 in Chicago, Illinois, and attended by various representatives of industries in that area. The meeting was entitled "EAST-WEST TRADE AND INVESTMENT" and had as its purpose "To discuss joint venture possibilities in Romania and to increase trade between Romania and Chicago businesses." Similar meetings were planned and held that same year in Atlanta, Georgia and Boston, Massachusetts. Rovin participated at these meetings on behalf of the wines of Romania at the request of the respondent, Corneliu Bogdan.

Romania is a socialist state governed by the Communist party of that country.

Foreign trade is a monopoly of the country of Romania. The defendant Vinexport is a creature of the Romanian government as a State Company or Enterprise for Foreign Trade, and is entrusted with the export of the wines and alcoholic beverages of that country. The respondent, Napoleon Fodor, as Economic Counselor to the Romanian diplomatic mission to the United States, was appointed to that position by the Romanian government. Respondent Corneliu Bogdan is, and was at all times relevant hereto, the Ambassador of Romania to the United States. In accordance with the law of Romania, he acts in dual capacity - he is the head of the diplomatic mission, and he is also responsible for the commercial activities of Romania in the United States. Article 51 of the Foreign Trade Law of Romania provides that all the trade activities of a State Company for Foreign Trade, such as defendant Vinexport, and of the commercial offices and missions abroad,

such as is headed by the respondent, Napoleon Fodor, shall function ". . . under the guidance and control of the chief of the diplomatic mission", respondent Corneliu Bogdan.

In 1972, the exact dates or times being unknown to Rovin, the respondent, Corneliu Bogdan and Napoleon Fodor, along with others not now known, planned and arranged to exclude Rovin from the wine markets which it developed and established in the United States and to destroy its business of selling the wines of Romania in the United States in accordance with a pre-conceived plan. As a consequence of the misrepresentations and clandestine activities on the part of the respondent, Corneliu Bogdan and Napoleon Fodor, the wine authorities of Romania granted the exclusive right to sell all alcoholic beverages of that country in the United States for 1973 to a company created expressly for such a purpose, and known as Beverage Importation

Corporation of League City, Texas. The acts and conduct of the respondents and others unknown now, in pursuit of such a plan, directly caused the ruin and destruction of the petitioner's business.

REASONS FOR GRANTING THE WRIT

1. The decision of the District Court, which the Court of Appeals refused to review, raises significant and recurring problems concerning suits against diplomatic representatives engaged in commercial pursuits.

The rights of American citizens who were tortiously damaged by acts committed within the United States by agents of a foreign government are involved herein. A determination by this court of the important and recurring question of diplomatic immunity to conform to the United States policy with regard to the res-

trictive immunity accorded to foreign governments engaged in commerce, will assure redress to persons wronged by a representative of a foreign sovereign in pursuit of his country's commercial activities in the United States.

The cause of action that is the subject of this appeal seeks damages for wrongful and malicious actions and conduct on the part of the respondents and others which directly caused the ruin and destruction of the petitioner's business.

The dismissal of the respondents as defendants was premised upon the certifications of the State Department that such parties are entitled to diplomatic immunity from suit by reason of "domestic law, 22 U.S.C., Sections 252-254", and "under the provisions of the Vienna Convention on Diplomatic Relations of 1961 (TIAS 7502)." The letter of the Department of State to the court which accompanied the certifications stated that ". . .

"the enclosed certifications are intended to inform the court of the diplomatic immunity status of Ambassador Bogdan and Mr. Fodor and for no other purpose relating to the pending action. . . " (underscoring supplied)

The question whether the respondents should be dismissed in the instant action was not considered by the Department of State, and, properly so. There is not even a "suggestion" of immunity by the Department in the pending case. The documents merely inform the court that the defendants enjoy diplomatic immunity from judicial process. Assuredly, the State Department was fully informed about the nature of the action against the defendants. If the purpose of the doctrine of diplomatic immunity would be served in our situation, the State Department would have, at least, suggested that the respondents be exempted from the present suit. It appears, however, that it is not the general policy of the State Department to make a decision

regarding immunity from suit on behalf of a foreign diplomatic representative in an action in which the facts do not call for such intervention. In the light of what the State Department does when it believes that immunity should be granted, namely "recognizing and allowing" the claim of immunity, the certification with the accompanying comment that it is "intended to inform the court of the diplomatic immunity status of (the parties) and for no other purpose relating to the pending action", should be regarded as merely the diplomatic way of saying no. It seems more likely that the State Department, in framing its letter, was indicating the view that the case might well be tried in court. The refusal or failure of the State Department to request immunity must be interpreted to represent a case of adherence to its new policy of discouraging immunity in cases involving commercial activities.

The District Judge construed the certi-

fications of the State Department as granting immunity to the respondents, Is it proper exercise of the judicial function of a court to dismiss on the ground of immunity when the State Department does not suggest immunity? Most commentators and legal scholars agree that immunity must somehow be curbed rather than extended, in keeping with the trend toward achievement of the "rule of law". The author of "The Use of International Law", 83 (1959), professor Jessup, at note 7, says:

> "(A)n abundant jurisprudence in many countries, as well as the position of the State Department itself, attests the validity of the conclusion that the granting or withholding of immunity is a legal question."

In National City Bank of New York v. Republic of China, 348 U.S. 356,359, this Court stated:

> ". . . the privileged position of a foreign State is not an explicit command of the Constitution. It rests on considerations of policy given legal sanction by this Court."

Mr. Justice Frankfurter expressed the view in Mexico v. Hoffman, 324 U.S. 30 (1945) that

the courts should not surrender jurisdiction unless the State Department or Congress explicitly asserts the necessity of abstention. In an opinion joined in by Mr. Justice Black, Mr. Justice Frankfurter stated, at pages 41-45:

> ". . . unless constrained by the established policy of our State Department, courts will best discharge their responsibility by enforcement of the regular judicial process."

In the instant situation, the Department of State, in its letter to the District Judge, did not deny or suggest that immunity be granted the respondents. Consequently, we believe, the reasonable approach to the problem is that the State Department is taking no position in the matter. Thus, the court was free to determine for itself the question of immunity. Authoritative writers are of the opinion that members of a diplomatic mission, such as our parties, do not enjoy independence in the sense of an exemption from all obligations toward the local law. Immunity

does not give an ambassador a license to commit wrongs deliberately against a national of the host country. He is entitled to immunity only so long as he properly discharges the diplomatic function of his office. It is universally accepted that the right to immunity is based on the exercise of diplomatic functions. The diplomatic function is the transaction of business between the government which sent the representative and that to which he is accredited. Montell Ogdon, professor of Public Law and Jurisprudence, Columbia University, explored the problem exhaustively in his book entitled "Juridical Bases of Diplomatic Immunity", (Washington: Byrne, 1936). In referring to the authoritative work of Sir Cecil J.B. Hurst, legal adviser to the British Foreign Office - "Diplomatic Immunities - Modern Developments", 10 British Yearbook of International Law, 1929, 1, professor Ogdon writes at pp 190, 191:

> "What then, according to these cases, is the purpose for which these immunities are recognized? It is to enable the members of a foreign mission to act effectively as the representatives of their sovereign in the maintenance of relations with the sovereign to whom they are accredited, said Sir Cecil. It is not to enable them to fulfill tasks lying outside of diplomatic activities. This test if applied to the member of a diplomatic mission or to any person claiming immunity should determine whether there is an obligation to allow the privilege." (underscoring ours)

Sir Cecil J.B. Hurst expressed the principle as follows:

> "If the representative is called upon by his own sovereign to perform functions other than those of maintaining relations with the sovereign to whom he is accredited, the purpose with which the latter acquiesces in his non-subjection to the local jurisdiction ceases to be operative in respect of those functions. The extraterritoriality or non-subjection to the local jurisdiction enjoyed by a member of a foreign diplomatic mission is, therefore, due not to the fact that he is engaged on the business of a foreign Government, but to the fact that he is a part of the machine for maintaining relations between two Governments." (underscoring ours)

And, Ogdon recites fuether:

> "In Barbuit case (1735), the question was whether the defendant, commissioned as an agent of commerce by the King of Prussia, should enjoy immunity. The Lord

> "Chancellor proceeded upon the theory that the functions performed by the agent, and not the mere existence of credentials issued by a foreign sovereign, should be the test whether a particular person should be privileged. He found that Barbuit was not 'intrusted to transact affairs between the two crowns' but only to assist his Prussian Majesty's subjects in their commerce. It was held, therefore, that he was not entitled to diplomatic immunity." (underscoring ours)

The propriety of joining a diplomatic agent, such as has been done in our case, was exhaustively considered and ruled upon by an Italian court in 1952. In an action before the Tribunal of Rome, brought by an Italian national against the Republic of Yugoslavia for money had and received, the Court, upon defendant's not appearing, inquired into its jurisdiction of its own motion. Considering that service of process was properly effected and that the transaction in issue was of a private law character, the Court determined that it had jurisdiction over the matter. Relative to our issue, the Court stated:

> "It has always been accepted that a diplomatic agent 'represents his state vis-a-vis the Government of the State to which

> "he is accredited, that he has charge of the public and private interests of his State, and that he may protect the rights of nationals of the latter State. But writers have not considered to any great extent the capacity of such an agent to represent his State or the Government thereof, in transactions of a private law character, or to represent the latter in proceedings in which it becomes involved as a result of such transactions. In the view of the Court, however, to hold that a diplomatic agent has this capacity would imply nothing incompatible with the nature of the diplomatic office. Indeed, as has been seen, the functions of diplomatic agents are of wide scope and are not circumscribed by any rule of international law. Such an agent is the official representative of one State within the territory of another. There is nothing improper in, nor is there any rule of international law to forbid, the extension of the functions of such an agent beyond the sphere of political or public activity - especially at the present day, when private law activities of States are extensive and diverse and when the majority of writers reject the former theory, based on the distinction between acts jure imperii and acts jure gestionis, . . . Applying this indisputable principle here, it must be concluded that if the rules as to diplomatic immunities do not debar a diplomatic agent from acting as an organ of his State even in a matter of a private law character, they do not, either, prevent his being joined as a defendant in proceedings arising out of a matter of a private law character in which that State is involved. Such an agent may be so

"joined if the receiving State is entitled to take jurisdiction over a foreign State and its organs in the matter in issue . . . . The Court's view of the matter is borne out by custom which is, of course, the largest source of international legal rules . . . ." (underscoring supplied)

Castiglioni c. Federal Peoples Republic of Yugoslavia, 19 Int'l L. Rep. 203,210 (No. 43).
See also, 6 Digest of International Law, Whiteman, (1968), pp 687,688.

The allegations of the amended-complaint, which are to be taken as true for the purpose herein and, additionally, the unchallenged factual statements in the record, establish that the activities and conduct for which the defendants are called to respond, are not of a diplomatic character, but purely and clearly extrinsic to the diplomatic functions for which they were accredited to our government. The purposes for which immunity is recognized, as stated by Montell Ogdon, are to enable Ambassador Bogdan and Mr. Fodor, as members of Romania's "diplomatic mission" to the Government of the United States, ". . .to

"act effectively as the representative of their own sovereign in the maintenance of relations with the sovereign to whom they are accredited. It is not to enable them to fulfill tasks lying outside of diplomatic activities." This is the test, Ogdon stated, to be applied to the member of a diplomatic mission in determining whether there is an obligation to apply the privilege of immunity. In charging the respondents with liability in our case, we have not trespassed into the sanctity of the diplomatic mission of the parties, nor have we interfered in any way with the proper performance of their diplomatic functions. The respondents themselves left the protective domain and privileged position of the diplomatic world to engage in activities totally extrinsic to the mission for which they were accredited by our government.

2. The Refusal Of The Court of Appeals To Review The District Court's Order Dismissing The Respondent's As Defendants In The Action Is Contrary To The Rule Enunciated In Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (L949), and Gillespie v. U.S. Steel Corp., 379 U.S. 148 (1964).

We set forth the facts and arguments in a more exhaustive manner to show how they relate to the question of finality and to elucidate upon the importance of review at this stage of the proceedings.

In Cohen the court declared with reference to the question of appealability of an interlocutory order as follows:

> "It is obvious that if Congress had allowed appeals only from those final judgments which terminate an action this order would not be appealable. The effect of the statute (28U.S.C. Sec., 1291) is to disallow appeal from any decision which is tentative, informal or incomplete. Appeal gives the upper court a power to review, not intervene. So long as the matter remains open, unfinished or inconclusive there may be no intrusion by appeal.

> But the District Court's action upon this application was concluded and closed and its decision final in that sense before the appeal was taken".

The same reasoning, as stated in Cohen, is applicable to our situation. The District Court's order dismissing the respondents as defendants "was concluded and closed and its decision final in that sense before the appeal was taken". The order on appeal is wholly collateral to the merits, and, its effect is to prevent the petitioner from proceeding against the "principal wrongdoers" in the action, thereby affecting the petitioner's substantive rights in a decisive, practical sense. So long as the decision affects the basic right to litigate, or finally determines a claim separable from and independent of the substantive issues so that a later review of it when an appeal is taken from the final judgment on the merits becomes an empty gesture, the Cohen test is met. The order of the District Court is too

important to deny interlocutory review. It cannot await the ultimate final judgment as the petitioner's rights against the respondents may be lost irreparably through the delay. The time is ripe for review of the issue of diplomatic immunity as it relates to commercial pursuits in view of the increasing practice by foreign governments of engaging in commercial activities through state trading companies.

The petitioner is entitled to its day in court, and to a hearing on the merits of its claim against the respondents. The injustice of allowing judicial immunity in this case is particularly apparent. The petitioner's business has been tortiously ruined and destroyed by the respondents, and, yet it is prevented from seeking judicial redress in our courts for wrongs committed in the United States. The refusal to

hear the petitioner's complaint against the respondents is permanent unless the order below is nullified by this court. It is only by a proper definition of the immunity to be accorded to the diplomatic representatives, and a proper circumspection of the effect to be given to Sections 252 - 254 that the American people can be assured that the hospitality accorded to diplomats on our soil will not be abused by conduct on the part of those privileged in a manner that is inimical to the American concept of fair play. Such immunity should be available only when it is truly necessary to assure the proper exercise of the diplomatic function- a circumstance that could be readily brought about if the granting of immunity were restricted to those cases where our State Department certified that the exemption from suit was in

the public interest.

CONCLUSION

For the reasons stated, a writ of certiorari should issue to review the order below.

Respectfully submitted,

John R. Vintilla

Attorney for Petitioner

Appendix A

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted: April 29, 1976
May 3, 1976

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge

Hon. LUTHER M. SWYGERT, Circuit Judge

Hon. WILLIAM J. BAUER, Circuit Judge

ROVIN SALES COMPANY, CLEVELAND OHIO,
Plaintiff-Appellant,

No. 76-1303 vs.

CORNELIU BOGDAN and NAPOLEON FODOR
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 73-C-1550

This matter comes before the court on the "MOTION TO DISMISS AND SUGGESTIONS IN SUPPORT THEREOF" filed herein on April 22, 1976 by counsel for the defendants-appellees. On April 28, 1976 counsel for the plaintiff-appellant filed herein his "APPELLANT'S RESPONSE TO MOTION TO DISMISS," which document indicated that the complete answer to the arguments made in the defendants-appellees' motion to dismiss is included in the "BRIEF OF APPELLANT WITH APPENDIX," previously filed herein on March 30, 1976. Upon consideration whereof, this court having thoroughly reviewed the aforesaid documents,

IT IS ORDERED that this appeal from a decision of the United States District Court for the Northern District of Illinois, Eastern Division be, and the same is hereby, DISMISSED in accordance with the motion of the defendants-appellees.

FPI 80—8-25-71-250M 0721

Appendix B

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROVIN SALES COMPANY,
Cleveland, Ohio,

Plaintiff,

v.

THE SOCIALIST REPUBLIC OF
ROMANIA, a foreign state,
et al.,

Defendants.

JANUARY 19, 1976

No. 73 C 1550

MARSHALL, J.

MEMORANDUM ORDER

The Department of State has certified to the diplomatic immunity from suit of defendants, His Excellency Corneliu Bogdan, Ambassador of Romania to the United States, and Napoleon Fodor, Economic Counselor of Romania, and they have moved that the action be dismissed as to them on those grounds. We have considered the papers submitted by the parties pro and con the motion and have concluded that the motion should be sustained. 22 U.S.C. §§252-254; Arcaya v. Paez, 145 F.Supp. 464 (S.D.N.Y. 1956), aff'd 244 F.2d 958 (2d Cir. 1957); Mongillo v. Vogel, 84 F.Supp. 1007 (E.D.Pa. 1949); Carrera v. Carrera, 174 F.2d 496 (D.C.Cir. 1949). Accordingly, the action is dismissed as to defendants Bogdan and Fodor.

All defendants have now filed their answers raising a number of affirmative defenses which, on their faces, appear meritorious.

Appendix C

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable PRENTICE H. MARSHALL

Cause No. 73 C 1550 Date Jan. 30, 1976

Title of Cause Rovin Sales Co. v. The Socialist Republic of Romania

Brief Statement of Motion Order

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

FEB 2 1976

Reserve space below for notations by minute clerk

Plaintiff's motion for reconsideration of the order of January 19, 1976 dismissing defendants Bogdan and Fedor or in the alternative, to certify the question for appeal is denied.

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

APPENDIX

DEPARTMENT OF STATE

Washington, D.C. 20520

December 4, 1975

Honorable Prentice H. Marshall
U.S. District Court
219 South Dearborn Street
Chicago, IL 60604

Re: Rovin Sales Company v. Vinexport, Civil Action 73 C 1550

Dear Judge Marshall:

As I promised your secretary on November 25, I am forwarding two certifications of immunity status relating to defendants in the above-mentioned case. These defendants are His Excellency Corneliu Bogdan, Ambassador of Romania to the United States, and Napoleon Fodor, Economic Counselor of Romania. Each of these persons is entitled to diplomatic immunity under both U.S. domestic law, 22 U.S.C. sections 252 - 254 and under the provisions of the Vienna Convention on Diplomatic Relations of 1961 (TIAS 7502), which is in force between the U.S. and Romania. Both Ambassador Bogdan and Mr. Fodor have been properly accredited as diplomatic Representatives of the Socialist Federal Republic of Romania to the United States.

The enclosed certifications are intended to inform the court of the diplomatic immunity status of Ambassador Bogdan and Mr. Fodor and for no other purpose relating to the pending action. If the court has any further questions on this issue, please feel free to communicate them to me.

Sincerely,

Horace F. Shamwell, Jr.

Horace F. Shamwell, Jr.
Deputy Assistant Legal
Adviser for Management

cc: Embassy of Romania
Mr. Eugene Resnick
Attorney for the Government of Romania

Enclosures:
as stated

Appendix E

22 U.S.C. SS252-254 read as follows:

"S252. Suits against ministers and their domestics prohibited.

Whenever any writ or process is sued out or prosecuted by any person in any court of the United States, or of a State, or by any judge or justice, whereby the person of any ambassador or public minister of any foreign prince or State, authorized and received as such by the President, or any domestic or domestic servant of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized, or attached, such writ or process shall be deemed void. R.S. S4063."

"S253. Penalty for wrongful suit.

Whenever any writ or process is sued out in violation of section 252 of this title, every person by whom the same is obtained or prosecuted, whether as party or as attorney or solicitor, and every officer concerned in executing it, shall be deemed a violator of the laws of nations and a disturber of the public repose, and shall be imprisoned for not more than three years, and fined at the discretion of the court. R.S. S4064."

"S254. Exceptions as to suits against servants, etc., of minister; listing servants.

Sections 252 and 253 of this title shall not apply to any case where the person against whom the process is issued is a citizen or inhabitant of the United States, in the service of an ambassador or a public minister, and the process is

"founded upon a debt contracted before he entered upon such service; nor shall section 253 of this title apply to any case where the person against whom the process is issued is a domestic servant of an ambassador or a public minister, unless the name of the servant has, before the issuing thereof, been registered in the Department of State, and transmitted by the Secretary of State to the marshal of the District of Columbia, who shall upon receipt thereof post the same in some public place in his office. All persons shall have resort to the list of names so posted in the marshal's office, and may take copies without fee. R.S. SS4065, 4066."

Appendix F

FOREIGN TRADE LAW OF ROMANIA
Exhibit I attached to Plaintiff's Motion
Under Rule 12.

Art. 2. In the Socialist Republic of Romania foreign trade is the MONOPOLY of the State and is carried out in accordance with these laws.

Art. 4. The general management of foreign economic relations of the Socialist Republic of Romania is performed by the Council of Ministers.

Art. 5. The Ministry of Foreign Trade assures the fulfillment of the policies of the Party and State in the field of foreign trade and international economic-technical participation.

Art. 21. Foreign Trade activities shall be organized in accordance with the needs of the social development of the Socialist Republic of Romania. The Council of Ministers determines the concrete manner of organizing these activities as well as the economic units which are entitled to directly effectuate foreign trade operations.

Art. 51. The commercial sections of the diplomatic missions, commercial agencies and offices abroad coordinate the activities of all permanent or temporary representatives of industrial units, central units, State companies for foreign trade, commercial missions and shall function in close unity with and under the guidance and control of the chief of the diplomatic mission.